

Eagle Conservation Plan Guidance Questions and Answers

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Question: Why is the Eagle Conservation Plan Guidance needed?

Answer: The Service published a Final Eagle Permit Rule (2009 Final Eagle Permit Rule) on September 11, 2009 under the Bald and Golden Eagle Protection Act (BGEPA; 16 USC 668-668d and 50 CFR 22.26) authorizing limited issuance of permits to take Bald and Golden eagles where the take is associated with but not the purpose of an otherwise lawful activity (74 Fed. Reg. 46836, September 11, 2009). Since publication of the 2009 Final Eagle Permit Rule, the planned development of wind-power facilities has increased dramatically in the core range of Golden Eagles in the western United States. Golden Eagles, in particular, are vulnerable to collisions with wind turbines, in some areas such collisions are a major source of mortality, and the documented level of take is increasing. This guidance provides a “road map” to industry to provide flexibility in the development of wind energy projects while protecting eagles.

Question: What laws protect eagles?

Answer: The Bald and Golden Eagle Protection Act (BGEPA) is the primary law protecting eagles from “take”, where take is defined as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb individuals, their nests and eggs. “Disturb” was defined by regulation at 50 CFR 22.3 in 2007 as “to agitate or bother a bald or golden eagle to a degree that causes...injury to an eagle, a decrease in productivity, or nest abandonment...” (USFWS 2007). In 2009, two new permit rules were created for eagles. 50 CFR 22.26 can authorize limited take of Bald and Golden eagles when the take is associated with, but not the purpose of an otherwise lawful activity, and cannot practicably be avoided. 50 CFR 22.27 can provide for the intentional take of eagle nests where necessary to alleviate a safety hazard to people or eagles, to ensure public health and safety, where a nest prevents use of a human-engineered structure, and where the activity or mitigation for the activity will provide a net benefit to eagles.

Question: What is the purpose of the Eagle Conservation Plan Guidance?

Answer: As a result of possible eagle collisions and effects from disturbance from wind turbines, many of the current and planned wind facilities should obtain permits to be in compliance with BGEPA. It is in the best interest of wind-facility operators to develop Eagle Conservation Plans as they plan wind turbine projects. The Eagle Conservation Plan Guidance provides the background information necessary for wind energy project proponents to prepare an

Eagle Conservation Plan (ECP) that assesses the risk of their project(s) to eagles and how siting, design, and operational modifications can mitigate that risk.

Question: How does the Eagle Conservation Plan Guidance address possible permits?

Answer: The Eagle Conservation Plan Guidance provides interpretive guidance to Service biologists and others in applying the regulatory permit standards as specified in the 2009 Final Eagle Permit Rule. This guidance does not impose additional regulatory requirements. The Eagle Conservation Plan Guidance also explains the Service's approach to issuing programmatic eagle take permits under 50 CFR 22.26, and provides guidance to applicants and biologists on the development of ECPs to support permit issuance.

Question: How do the Eagle Conservation Plan Guidance and *U.S. Fish and Wildlife Service Wind Energy Guidelines* compare?

Answer: The Eagle Conservation Plan Guidance is compatible with the general guidelines provided in the *U.S. Fish and Wildlife Service Draft, Land-Based Wind Energy Guidelines*. Both documents provide iterative processes for making the best possible decisions to reduce the overall negative effects to wildlife resources resulting from siting, construction, and operations of wind energy facilities. Both documents describe the information needed to identify, assess, mitigate, and monitor the potential adverse effects of wind-energy projects.

The U.S. Fish and Wildlife Service Draft, Land-Based Wind Energy Guidelines address effects to fish and wildlife trust resources and their habitats relatively generally, whereas the Eagle Conservation Plan Guidance provides recommendations based specifically on the biology of and legal protections for Bald and Golden eagles. Under the Bald and Golden Eagle Act (BGEPA) the Service is allowed to issue permits for eagle take when conditions are met.

Question: Is the Eagle Conservation Plan Guidance binding?

Answer: Binding requirements for issuance of programmatic eagle take permits are described in the regulations at 50 CFR 22.26. The Eagle Conservation Plan Guidance provides non-binding recommendations to wind project proponents and state, tribal, and federal regulatory agencies on how to collect and present the information required in 50 CFR 22.26 for the Service to issue programmatic eagle take permits. . The Eagle Conservation Plan Guidance provides interpretive guidance for the wind industry for how to make use of existing permit regulations to achieve compliance with the Bald and Golden Eagle Protection Act. This guidance is flexible and is designed to speed up the process for permitting wind energy development while providing protections for eagles.

Question: When does this guidance take effect?

Answer: While the guidance may be modified after public comments are considered, the guidance provides a "road map" for Service employees and industry to use for the type of

analysis and science that should be considered in a robust permit application to provide flexibility to the wind energy industry while safeguarding wildlife.

For more information, visit the Service's website at <http://www.fws.gov/windenergy/>